



IN THE CIRCUIT COURT OF LAUDERDALE COUNTY, ALABAMA

STATE OF ALABAMA)

V.)

) Case No.: CC-2018-000586.00

WEAKLEY MARCUS JERMAINE)
Defendant.)

ORDER OF IMMUNITY BASED ON SELF-DEFENSE

The August 2018 term of the Lauderdale County Grand Jury indicted Marcus Jermaine Weakley (Defendant) in a single count indictment for the shooting death of Patton Lanorris Shipley in violation of §13A-6-2, Code of Alabama, 1975 (alleging intentional murder). On October 19, 2018, the Defendant filed a “Motion for Immunity Hearing” (and an amended motion on September 23, 2019) as specifically required by §13A-3-23(d)(2), whereby the Defendant asserted the claim that his use of force, including deadly physical force, was justified, or simply put, claiming self-defense. *See* §13A-3-23 (Self-defense – Defense of others). This matter was set for pretrial hearing or bench trial as required by law, which states: “Prior to the commencement of a [jury] trial in a case in which a defense is claimed under this section [§13A-3-23], the court having jurisdiction over the case, upon motion of the defendant, shall conduct a pretrial hearing to determine whether force, including deadly force, used by the defendant was justified or whether it was unlawful under this section. During any pretrial hearing to determine immunity, the defendant must show by a preponderance of the evidence that he or she is immune from criminal prosecution.” §13A-3-23(d)(2).

This case was called on Monday, September 30, 2019 for the required pretrial hearing or bench trial. The Defendant, Marcus Jermaine Weakley, was present and represented by counsel,

Chris Smith. The State of Alabama was represented by Lauderdale County District Attorney Chris Connolly. Members of the Shipley family were present in open Court to represent Patton Shipley. Detective Justin Wright of the Florence Police Department (FPD) was the case agent in charge of the investigation. Det. Wright and Shipley's father, Rush Rowell, were designated by the District Attorney to represent the State. Witnesses were sworn and then testimony and evidence were received by the Court. The pretrial hearing or bench trial was concluded on Tuesday, October 1, 2019. By agreement and stipulation of the parties, the Court along with both attorneys, went to the scene where the homicide occurred. Examination of the scene by the Court is considered in evaluating the credibility of witnesses and weight to be given to the testimony and evidence received the by Court.

BURDEN OF PROOF: PREPONDERANCE OF EVIDENCE

The statute governing this pretrial hearing or bench trial states the burden of proof: "During any pretrial hearing to determine immunity, the defendant must show by a preponderance of the evidence that he or she is immune from criminal prosecution." §13A-3-23(d)(2). "Preponderance of the evidence" is defined as:

"The greater weight of evidence, not necessarily established by the greater number of witnesses testifying to a fact but by the evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."

Jenkins v. State, 972 So. 2d 165, 167 (Ala. Crim. App. 2005)(citing Black's Law Dictionary 1220 (8th ed. 2004)).

In other words, for this pretrial hearing the law provides that the defendant carries the burden of proving his claims. *See generally* Alabama Pattern Jury Instructions (APJI)-Civil 8.00 (as modified in the pattern jury charge used in Lauderdale County Circuit Courts). Under the

required burden of proof laid out by the statute (preponderance of the evidence), the trier of fact (in this case, the Court) must be reasonably convinced or persuaded by credible evidence presented that the proposition is more probably true than not. *Id.* This burden of proof cannot be met by conjecture, surmise or speculation. *Id.* If the defendant reasonably satisfies the Court during the pretrial hearing by the weight of the evidence that what he contends is more likely than not, then the defendant has met his burden of proof under the “preponderance of the evidence” standard of proof. *Id.* If the defendant fails to meet this burden of proof, then the Court would rule in favor of the State and this matter would then proceed to jury trial. *Id.*; *see also* §13A-3-23(d)(2).

SUMMARY OF TESTIMONY & WEIGHT OF EVIDENCE

The Defendant, Marcus Weakley, was called as the first witness. According to Weakley, he went to a location where an individual identified as Terry Wells was hosting a “private party” on June 9, 2018, located at or near 345 Westmoreland Avenue, Florence, Lauderdale County, Alabama.¹ He went there to pick up his then girlfriend, Angela Reeder. Reeder was delayed leaving because she was helping clean up. Weakley then waited outside on the road or around the edge of the property where the “party” was located. As the “party” ended between 2 and 3 o’clock in the morning of June 10, 2018, the crowd--in varying states of intoxication--began leaving. Various fights broke out in multiple locations. Between avoiding the fights and the crowds drawn to the fights, the defendant moved into a field or vacant lot beside the structures where Terry Wells was “hosting the party.” Patton Shipley and others were on one end of the lot near a parked vehicle

¹ It is a reasonable inference from the evidence that the individual identified as Terry Wells was operating an illegal business selling alcohol without a business or liquor license – or the necessary security required for such an establishment. Terry Wells was referred to at trial as a “bootlegger.” One witness testified that he had met people and drank at the bar operated by Wells in the past. One witness testified that he purchased twenty-one (21) beers before it closed to take home and finish the evening. The testimony was consistent that some 150 people were in or around Wells property at or near the time of the shooting. When the Court viewed the property at the conclusion of the trial there were 3 or 4 very large industrial sized clear plastic garbage bags full of empty beer cans in plain view outside the establishment, along with clearly visible signage about following the rules or be asked to leave. The term “private party” is clearly a euphemism employed to describe what is an illegal club, nightclub or bar being operated in the middle of a residential neighborhood in violation of various local ordinances, zoning laws, and state laws governing such establishments.

described as a SUV and Weakley was on the other. Weakley's girlfriend appeared and stated to Weakley that she was ready to leave. According to his testimony, Weakley did not want to turn his back on Shipley or the other individuals with Shipley after observing Shipley to be armed and believing them to be hostile towards him (*see footnote 3, infra.*), so he began to back away towards his car when he was grabbed from behind by a man identified as Howard Watkins (aka Duck). Watkins (Duck) admits to placing Weakley in what can be described by the Court as a massive "bear hug" thereby restraining Weakley.

The testimony is very much in dispute as to why Watkins (Duck) grabbed Weakley, but all sides agree that Watkins (Duck) grabbed Weakley thereby restraining him. Weakley testified that Watkins (Duck) performed a football-like tackle, attacking him and holding him in place while yelling to Shipley and associates, "[G]et him! Regaine, get him! Y'all get him! Hurry up and get him!" Howard Watkins (Duck) denies this, but instead claims that Weakley was advancing toward Shipley and others; therefore, Watkins (Duck) grabbed him to calm Weakley down or, alternatively, afford Shipley and others an opportunity to escape. Still, the situation is that Howard Watkins (Duck) actively grabbed and restrained Weakley--and this fact is not in dispute.

In response to being grabbed and restrained, Weakley testified that he tried to break free but when he could not break free, that he was able to reach one of two guns he kept on his person.² He fired one of the firearms identified as a five (5) shot Taurus .45 revolver referred to as "The Judge" (State's Ex. 3) from his restrained position into the legs of Watkins (Duck) and was able to break free only because he shot Watkins (Duck). At this juncture, the Court takes judicial notice

² There was proof that Weakley purchased both firearms legally (ATF Trace Forms, Defendant's Ex. 22); both firearms were registered and Weakley had obtained a valid conceal-carry permit from the Franklin County Sheriff's Department, which is recognized as legally valid in Lauderdale County, Alabama (Defendant's Ex. 1). Also, Weakley testified that he carried and trained with two firearms after being advised by police as to why most police officers carry two firearms, namely a primary then reserve weapon. Further, the Court observes from the manner Weakley described the events that he seemed to be trained and proficient with firearms, and employed firearm tactics and training to address being fired on; as opposed to wildly shooting into the crowded, chaotic scene outside of Terry Wells illegal bootlegging operation.

of the Indictment (Doc. 1 for Case No. CC-2018-586). The Grand Jury only charged Weakley with the murder of Patton Shipley and did not file any charges against Weakley for shooting Howard Watkins (Duck), whether aggravated assault (i.e., Assault in the First or Second Degree with a firearm; *compare* § 13A-6-20 & 21, respectively) or attempted murder (§§13A-4-2 & 13A-6-2). No manner of criminal charges were filed for Weakley shooting Watkins (Duck).

As Weakley shot and wrestled his way away from Watkins (Duck), he testified that he heard the “whizzing” of a bullet fired from Shipley, or the location where Shipley was positioned, go past the left side of his head, then a second round “whiz” past the right side of his head. He testified he then saw Shipley and multiple others with Shipley armed and the “fire” from the guns (muzzle flashes) coming from the vicinity of the vehicle or SUV they were using for cover.

Weakley quickly discarded one handgun because all ammunition was spent, then drew his second weapon, identified as a Glock 21 .45 caliber semi-automatic handgun (State’s Ex. 5) and positioned himself to return fire. He claims he made a tactical decision while taking fire to advance toward the SUV that they were using as cover because that was the best cover available for him under the circumstances -- where Weakley could keep the SUV between him and those firing at him. As he made his way toward the SUV for cover, he fired one volley of shots then continued to proceed to the SUV with his firearm in the ready position. Observing this, several individuals with Shipley dropped their firearms and fled. As Weakley took cover toward the rear of the SUV, Patton Shipley pointed his firearm at Weakley from the front of the SUV. Weakley responded by returning fire and shot Shipley eight (8) times, thereby killing him (*see* Report of Autopsy, State’s Ex. 19; testimony of Dr. Valerie Green, State Medical Examiner). The 9mm semi-automatic handgun used by Shipley was also recovered by police (State’s Ex. 22, more specifically identified as SCCY Industries Model GPX-1).

Weakley's version of events was corroborated, in part, by his girlfriend, Angela Reeder. Specifically, she testified that Howard Watkins (Duck) tackled Weakley and was restraining him while hollering, "I got him! Come get him!" to Shipley and others. Additionally, Jonathan Lewis Anderson was an eyewitness to the shooting and corroborated Weakley's testimony.

In response, other fact witnesses were called by the State to disprove Weakley's version of events: a) Howard Watkins (aka Duck); b) Michael Robinson (aka Mike Robb); c) Regaine Watkins; d) James LaPriest Nace or Harrison (aka Pre).

Additionally, the State called Courtney Shipley (brother of the deceased) and Jeremiah Thompson (aka Jook). Both testified to past issues between the defendant and deceased, including some events that night that preceded the shooting. Their testimony established motive and was proof that both men (Weakley and Shipley) had issues with each other for some years.³ The Court notes that the defendant (Weakley) admitted the same during his testimony. The testimony of both Courtney Shipley and Jeremiah (Jook) Thompson was credible and weighed heavily by the Court (though ultimately outweighed by other credible evidence). For example, Thompson (Jook) even testified to making the two men shake hands earlier the night of the shooting and then later told Shipley to leave before something happened. Shipley, however, did not leave. Both Courtney Shipley and Jerimiah (Jook) Thompson admittedly left the vicinity of Terry Wells property prior to the shooting; therefore, neither Courtney Shipley nor Jeremiah Thompson witnessed the actual shooting nor any of the events that immediately preceding the shooting.

The individuals who testified that they actually witnessed the shooting, namely Howard Watkins; Michael Robinson; Regaine Watkins, and James LaPriest Harrison, all gave testimony

³ The long-standing hostility or "beef," as it was referenced during testimony, between Weakly and Shipley stemmed from the murder of an individual identified as Willie Koger. Weakley was a friend of Koger and the murder of Koger was believed, at least by Weakley, to have been done by associates of Shipley, who was in jail at the time of the murder.

that was seriously conflicted about the specific events of the actual shooting – and can be generally categorized as an effort by these witnesses to show Weakley either provoked the shooting (*see* §13A-3-23(c)(1)), or was the initial aggressor (*see* §13A-3-23(c)(2)).

By way of example, James Harrison (Pre) left the scene in the SUV that contained bullet holes, firearms and other physical evidence of the homicide (the very vehicle both sides were using as cover). Then the trial testimony of James Harrison (Pre) was completely inconsistent with all prior statements. First, his trial testimony contradicted his prior handwritten statement to police (Defendant's Ex. 24). Second, his trial testimony and his handwritten statement contradicted the interview given to the case agent, Det. Justin Wright. In short, Harrison's trial testimony was at least the third version of the events given by the same witness, so the Court can assign little or no weight to that testimony. Also, James Harrison (Pre) was identified by Weakley as one of the individuals with a firearm (e.g. long gun) with Shipley (compare State's Ex. 23, which is a short-barreled shotgun recovered from the SUV).

The testimony of Michael Robinson (Mike Robb) was compelling and painted Weakley as the initial aggressor with premeditation. He (Mike Robb) even described a prior shooting between the two men years before that he witnessed. However, his (Mike Robb's) testimony did not come close to matching any other version of events by any other witnesses. Further, his (Mike Robb's) version of the manner Weakley shot and killed Shipley conflicted with all of the physical evidence located and documented at the crime scene by FPD. Therefore, the Court must assign limited weight to this version of events, particularly because it is contradicted by the physical evidence documented from the crime scene by FPD.

As another example, Regaine Watkins also tried to paint Weakley as the aggressor. Regaine Watkins denied being armed or shooting, but Weakley specifically identified Regaine

Watkins as one of the actors that night that helped provoke the confrontation and that he (Regaine Watkins) attempted to get Shipley's firearm (State's Ex. 22), either to remove it from the crime scene or to use it against Weakley. Of course, Regaine Watkins denied doing anything to provoke or participate in the incident. However, the demeanor of Regaine Watkins and the manner which he answered questions while testifying made the Court question his credibility and assign limited weight to his testimony.

The testimony of Howard Watkins (Duck) has already been discussed.

As opposed to conflicting testimony of multiple fact witnesses proffered by the State, some of whom were flatly contradicted by the physical evidence collected and documented by the work of the Florence Police Department (FPD), the version of events testified to by the defendant, Marcus Weakley, was corroborated by Angela Reeder and Jonathan Lewis Anderson—both eyewitnesses. Moreover, the defendant's version of events was largely corroborated by the location of physical evidence documented and recovered by FPD at the crime scene (even the SUV was stopped by FPD attempting to leave the scene and subsequently impounded and processed by FPD).

Also of both legal and factual significance to this Court is that every version of events described by Weakley remained consistent: from the spontaneous statements that night at the homicide scene (State's Ex. 4, body camera footage of UNA Officer Ken Richey); through his Mirandized statements to FPD detectives; through his Grand Jury testimony; and through his trial testimony—all of Weakley's statements remain consistent. And again, Weakley's version of events was largely corroborated by the location of physical evidence documented by the FPD at the crime scene.

Additionally, there is one more significant fact on which this Court places great weight and which is also undisputed. All of the fact witnesses proffered by the State that actually witnessed (or participated in) the shooting fled the scene after the shooting—with one even attempting to remove major pieces of physical evidence from the crime scene. Yet, by comparison and contrast, Defendant Marcus Weakley remained on the scene near the body of Shipley until police arrived. *Weakley waited at the homicide scene for police to arrive.* He disassembled his weapon and placed the pieces of the weapon at a safe distance away so as not to indicate any threat to police. Then when police arrived, namely UNA Officer Ken Richey, Weakley calmly knelt down and surrendered to police—following all commands—and explained to Officer Richey that he had no choice but to defend himself or words to that affect. (State’s Ex. 4, body camera footage of UNA Officer Ken Richey). For it is written: “The guilty flee when no one pursues, but the righteous are bold as a lion.” Proverbs 28:1.

APPLICATION OF THE SELF DEFENSE STATUTE, §13A-3-23

There is no dispute that Marcus Weakley shot and killed Patton Shipley on the night in question; only that Weakley asserts self-defense, namely that his use of physical force, including deadly physical force, was legally justified under the circumstances. The law of self-defense states, in pertinent part:

(a) A person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believed to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for the purpose. A person may use deadly physical force, and is legally presumed to be justified in using deadly physical force in self-defense, if the person reasonably believes that another person is: (1) using or about to use unlawful deadly physical force [or] (3) committing or about to commit ... assault in the first or second degree.

(b) [STAND YOUR GROUND:] A person who is justified under subsection (a) in using physical force, including deadly physical force, and who is not engaged in an unlawful activity and is in any place where he or she has the right to be has no duty to retreat and has the right to stand his or her ground.

[DUTY TO RETREAT:] Notwithstanding the provisions of subsection (a), a person is not justified in using deadly physical force upon another person if it reasonably appears or he knows that he can avoid the necessity of using such force with complete safety: (1) by retreating, except that the actor is not required to retreat: (i) if he is in his dwelling or at his place of work and was not the original aggressor; or (ii) if he is a peace officer or a private person lawfully assisting a peace officer at his discretion.

(c) Notwithstanding the provisions of subsection (a), a person is not justified in using physical force if: (1) with intent to cause physical injury or death to another person, he provoked the use of unlawful physical force by such other person; [or] (2) he was the initial aggressor, except that his or her use of physical force upon another person under the circumstances is justifiable if he withdraws from the encounter and effectively communicates to the other person his or her intent to do so, but the latter person nevertheless continues or threatens the use of unlawful physical force; [or] (3) the physical force involved was the product of a combat by agreement not specifically authorized by law.

§13A-3-23; *see also*, Malone v. State, 221 So. 3d 1153 (Ala. Crim. App. 2016) (citing self-defense statute prior to 2006 amendments and holding that “duty to retreat” applies unless “stand your ground” elements are met).

Most self-defense claims turn on proper application of subsection (a) and (c) that define the long-standing legal parameters that apply to the use of force, including deadly physical force. That is not to imply that subsection (b)(stand your ground) is unimportant. Subsection (b)(stand your ground) is very important, yet it seems to have eclipsed subsections (a) and (c) of late; while subsection (b)(stand your ground) itself is widely misunderstood, or worse, grossly misapplied by some as if it were an unfettered license to kill. To clarify, a citizen’s lawful ability to “stand your ground” only legally modifies or abrogates the duty that the common law or prior self-defense statute imposed upon a citizen to *retreat*, unless they are in their home or business, and so long as

it was safe enough for the citizen to retreat under the circumstances of the threat imposed by the aggressor (*i.e.*, retreat with complete safety).

Case in point are the particular facts and circumstances of this case. First, Terry Wells was operating an unlawful business selling alcohol illegally (*see* footnote 1, *supra.*). The entire gathering hosted by Terry Wells was illegal. *Id.* Other than adjacent property owners who stayed on their property minding their own business, absolutely no person attending or in the area that night because of Terry Wells “private party” was engaged in lawful activity or in a place where they had a legal right to be. *Id.* Neither the Weakley nor Shipley’s presence at or near the illegal bootlegging operation of Terry Wells entitled them to claim the legal protections of the “stand your ground” subsection of the self-defense statute, §13A-3-23(b).

However, by voiding the defendant’s legal authority to “stand his ground” based on the illegality of Terry Wells bootlegging operations, in turn, imposed on the defendant his lawful duty to retreat, if and only if he can retreat and can *retreat with complete safety* under the circumstances. *See* §13A-3-23(b)(prior to 2006 or 2016 amendments); *see also* Malone, 221 So. 3d 1153 (Ala. Crim. App. 2016), *supra.* Stated another way, prior to this Court reading or interpreting the Alabama self-defense law to authorize any manner of gun battle outside of an illegal bar, illegal club, illegal night club or illegal bootlegging operation in the middle of a residential neighborhood where dozens upon dozens of bystanders—along with adjacent property owners—may be actively in harms way, then this Court reads the law of self-defense, even under the “stand your ground” amendments, to require or mandate that any reasonable citizen exercise their duty to retreat from the illegal scene or illegal operation, but only if they can retreat or remove themselves with complete safety.

Importantly, one of the very few undisputed facts of this case is that Marcus Weakley was grabbed and restrained by Howard Watkins (Duck). By the time he employed physical force, including deadly physical force by shooting Watkins (Duck) in the legs to free himself to retreat, then Weakley was being fired on by Patton Shipley or individuals with Patton Shipley. While the defendant may not have been legally entitled under the facts and circumstances of this particular case to “stand his ground”, this Court finds by a preponderance of credible evidence that the defendant was not able to retreat at all or to retreat safely due to the intervening actions of Howard Watkins (Duck). This eliminated his ability to retreat, period, or to at least retreat safely, then he started taking gunfire from Patton Shipley and his associates.

Once the issues of “stand your ground” or the defendant’s inability to retreat with complete safety are resolved, application of subsection (a) and (c) is both critical and straightforward based on the most credible evidence proven to the Court at the pretrial hearing: Patton Shipley and those with Patton Shipley were firing at Marcus Weakley after he fought to free himself from Howard Watkins (Duck). With any pathway to safely retreat eliminated, Marcus Weakley was within his legal rights to defend his life by shooting back. As the law of self-defense makes clear: “A person may use deadly physical force and is legally presumed to be justified in using deadly physical force in self-defense, if the person reasonably believes that another person is *using or about to use unlawful deadly physical force.*” §13A-3-23(a)(emphasis added). The Court finds that the most credible testimony, supported or corroborated by other similar testimony and the physical evidence identified by the Florence Police Department (FPD), all support this finding by a preponderance of the evidence. Patton Shipley was using or about to use unlawful deadly physical force against the defendant, Marcus Weakley; therefore, Weakley was justified in using deadly physical force

in self-defense and his decision to do so was objectively reasonable under the most credible version of the facts and circumstances proven to the Court at the pretrial hearing or bench trial.

Further, the proof offered by witnesses proffered by the State that the defendant, Marcus Weakley, provoked the attack by Patton Shipley or others, §13A-3-23(c)(1), fails to convince this Court by a preponderance of the evidence that the shooting was not justified. This finding by the Court is based on the conflicts in the testimony, demeanor of the witnesses and conflicts between those witnesses' version of events and the physical evidence identified and documented by FPD at the crime scene.

Any proof offered by witnesses proffered by the State that Weakley was the initial aggressor, §13A-3-23(c)(2), fails to convince this Court by a preponderance of the evidence that the shooting was not justified. This finding by the Court is based on the conflicts in the testimony, demeanor of the witnesses and conflicts between those witnesses' version of events and the physical evidence identified and documented by FPD at the crime scene.

Lastly, there was insufficient, if any, evidence that this incident between Shipley and Weakley was some result of combat by agreement, §13A-3-23(c)(3).

ORDER OF LEGAL IMMUNITY & DISMISSAL OF CHARGES

This Court would prefer this matter to be presented to a jury and to be resolved by a trial by jury regarding the disputed issues of fact and conflicts in this evidence. *See* U.S. Const. Art. III, §2, cl. 3 (requiring trial by jury in all criminal cases). However, the amended law of self-defense in the State of Alabama pursuant to §13A-3-23(d)(2)(as amended 2006 & 2016) mandates that before any citizen claiming self-defense can be put to jury trial, that the Court should conduct a pretrial hearing or bench trial to determine the immunity claim now contained in the law of self-

defense, §13A-3-23(d)(1). The procedure mandated requires this Court actually sift and weigh the evidence, including what credibility to give witness testimony and what weight to be assigned to any given evidence, then weigh all of the evidence to reach a conclusion based on the civil burden of proof of preponderance of the evidence. Having performed this duty imposed by law, and based on the sworn testimony and evidence proven at the pre-trial hearing that this Court has sifted and weighed and based on what this Court has determined to be the most credible evidence, the Court ORDERS as follows:

1. The Defendant, MARCUS JERMAINE WEAKLEY, used force, including deadly physical force, as justified and permitted in this section and is IMMUNE from criminal prosecution and civil action for the use of such force. §13A-3-23(d)(1) & (3). The defendant was lawfully within his established legal rights of self-defense according to Alabama law. §13A-3-23; *see also*, U.S. Const. Amendment II.

2. THEREFORE, pursuant to §13A-3-23(d)(3), this matter is hereby DISMISSED.

DONE and ORDERED this the 9th day of October, 2019.


 WILL POWELL
 CIRCUIT JUDGE

CC: Chris Connolly, District Attorney
 Chris Smith, Counsel for Defendant
 Det. Justin Wright, Florence Police Department